task, the shorter timeframe shall be adopted. Some of the disputes shall be resolved as specified below. Any of the disputes may be resolved as agreed to by the parties.

The Panel does specifically find that Schedule language should be adopted as follows:

Schedule 9.2.4	Adopt AT&T's proposed language at ¶ 1.4.
Schedule 9.2.5	Delete last AT&T proposed sentence at ¶ 3.1.1.
Schedule 9.2.6	Adopt language consistent with specific rulings on § 10.13 of the Contract as discussed below.
Schedule 9.5	Adopt AT&T's proposed language at ¶¶ A.1.2 and A.1.3.
	Adopt AT&T's proposed language at ¶ A.1.3 1.6.
	Reject AT&T's proposed language at ¶¶ A.1.13 1.9 and A.1.14 **1.10.**
	Adopt AT&T's proposed language at ¶ 2.2.5.
	Reject Ameritech's proposed language at ¶ 4.1.4.
	Reject AT&T's proposed language at ¶¶ 4.1.5 and 4.1.7.
	Adopt AT&T's proposed language at ¶ 4.2.4.
	Reject AT&T's proposed language at ¶ 6.1.1.
Schedule 12.12	Adopt Ameritech's proposed language at ¶ 3.3.
	Reject AT&T's proposed language at ¶¶ 3.4-3.10.

ISSUE 12

What advance written notification of Operations Support Systems changes should be required?

DECISION:

The Panel finds that Agreement language proposed by AT&T at Article XI should be adopted and that Ameritech's proposed language at § 10.7 should be rejected.

REASONS FOR DECISION:

AT&T has requested reasonable advance notice of changes in Operations Support System functions. Ameritech has proposed that a 90-day notice is reasonable in all cases. According to the FCC August 8, 1996 Second Report and Order in CC Docket No. 96-98, appropriate timeframes for network change disclosure may vary depending upon the issue involved. Therefore, the Panel finds AT&T's proposed Agreement language more closely recognizes this variation.

ISSUE 13

Whether Ameritech will provide one or separate electronic interfaces for Pre-ordering, Ordering, and Provisioning functions?

DECISION:

The Panel finds that separate interfaces are reasonable and therefore finds that the contract language proposed by Ameritech at § 10.13.2 of the Agreement should be adopted.

REASONS FOR DECISION:

Ameritech proposes that two electronic interfaces be used for the transferring and receiving of data necessary to perform the above functions. Ameritech currently utilizes one type of interface for some elements and services (e.g. loops, ports and interoffice transmission) and a different type for others (e.g. local switching and resale). AT&T prefers that one interface be used but offers no rationale for its preference. Ameritech's proposal should be adopted since two interfaces are

currently in use.

ISSUE 14

What technical standards will apply to Ameritech's electronic interfaces for Pre-ordering, Ordering and Provisioning?

DECISION:

The Panel finds that the contract language regarding interface documents proposed by Ameritech should be adopted. In addition, AT&T's proposed contract language at § 10.13.2(a) should be adopted with the exception of the sentence "Furthermore, Ameritech will migrate to a more real time interface using Electronic Communications-Lite (EC-Lite) technology, for pre-ordering, ordering and provisioning."

REASONS FOR DECISION:

The Panel finds the language adopted is consistent with ¶ 527 of the FCC Order which states that each incumbent LEC will provide access to support systems through a nationally standardized gateway. The Panel is of the opinion that AT&T's rejected language is unnecessary in light of the contract language adopted which allows for the implementation of an industry standard interface to be developed by the Ordering and Billing Forum.

ISSUE 15

Whether the implementation plan under this Agreement should establish a process for disaster recovery?

DECISION:

A disaster recovery plan should be included in the Implementation Plan resulting from this

Agreement. This disaster plan should address matters set forth in AT&T's Schedule 10.13.2-1 of the Agreement.

REASONS FOR DECISION:

Ameritech opposes AT&T's proposal for the Implementation Plan to develop a process for disaster recovery on the basis that Ameritech's existing recovery plan is proprietary and is consistent with applicable law. The Panel, however, finds it is reasonable that the Implementation Plan should establish a process for disaster recovery which would address the matters set forth at AT&T's Schedule 10.13.2-1. Ameritech's claim that its existing disaster recovery plan is proprietary does not justify failing to include a disaster recovery plan in the Implementation Plan of this Agreement. Since Ameritech claims that its existing disaster recovery plan is proprietary there can be no open comparison to AT&T's recommendation for development of a disaster recovery plan. Disaster recovery is important to all recipients of telecommunications service and therefore not a subject which should be shrouded by secrecy.

ISSUE 16

Whether AT&T will have the ability through an electronic interface to identify a local service provider or long distance provider when needed as proposed in Schedule 10.13.2-2?

DECISION:

The Panel finds that the language proposed by AT&T in Schedule 10.13.2(a) of the Agreement should be adopted.

REASONS FOR DECISION:

The language proposed by AT&T appears to be reasonable and the Panel finds no reason why

Ameritech should deny such a request.

ISSUE 17

What contract language should be adopted with regard to the provisioning of Migration-As-Is orders?

DECISION:

The Panel finds that the language proposed by AT&T in Schedule 10.13.2-3 of the Agreement should be adopted.

REASONS FOR DECISION:

Migration-As-Is orders should be processed without having to specify each feature and service being subscribed to by the customer at the time of the request. An AT&T representative should be allowed to submit a Migration-As-Is order with only the customer's name and telephone number. If the specific local service package has to be obtained from the customer, lack of accurate information results. It has become clear in the long distance marketplace that a market's competitiveness is directly proportional to the ease by which its purchasers can change between suppliers (Starkey Testimony, p. 34). The Panel also sees no reason to deny a Migration-As-Is order if at the time of transfer a customer decides to request a change in features and/or services. Denying a simple change in features and/or services at the time of transfer appears to be unreasonable and therefore the Panel adopts contract language proposed by AT&T.

ISSUE 18

What technical standards should apply to the electronic interfaces for Maintenance and Repair?

DECISION:

The Panel finds that the Agreement language proposed by AT&T at § 10.13.3 with the exception of the technical reference "T1.228-95" should be adopted.

REASONS FOR DECISION:

The technical reference proposed by AT&T requires that the interface comply with AT&T's Fault Management EBI document but provides no detail or reason for the technical reference. Lacking any specific justification for its inclusion, the Panel rejects the additional technical reference proposed by AT&T but adopts inclusion of the language referring to a future industry standard interface.

ISSUE 19

Should Ameritech, at AT&T's request, be required to recourse charges on 900 and 976 calls to Information Service providers?

DECISION:

The Panel finds that the Agreement language proposed by Ameritech at § 10.16.2 should be adopted.

REASONS FOR DECISION:

The Panel rejects the contract language proposed by AT&T as inconsistent with existing federal pay-per-call rules (47 U.S.C. Article 228(f)). Essentially, AT&T is requesting that Ameritech serve as its agent to recourse back to the information provider. If a customer dispute arises, AT&T as the local exchange provider, should be responsible for contacting the information provider and getting the proper recourse. The billing entity is responsible for any customer adjustment. AT&T's

recourse is with the information service provider not Ameritech.

ISSUE 20

Whether Ameritech's central office power supply to AT&T should be provided in the manner requested by AT&T?

DECISION:

The Panel finds that the power supply to AT&T should be provided in the manner proposed by AT&T. The Agreement language proposed by AT&T in Schedule 12.16 therefore should be adopted.

REASONS FOR DECISION:

AT&T is requesting that its Battery Distribution Fuse Bay (BDFB) be located within its collocated space. Ameritech, on the other hand, is offering to locate the BDFB in its space and then supplying a power feed to AT&T on an as-needed basis. It is the Panel's view that AT&T should have the flexibility of using its own BDFB if such an arrangement is determined by AT&T to be more efficient for its network. AT&T is simply requesting that it have the ability to regulate how it supplies power to its equipment. AT&T states it will pay for all the power it uses no matter where the fuse bay is located. In addition, it will eliminate the need for on-going additional power feeds from Ameritech thus saving AT&T ordering and provisioning costs.

ISSUE 21

Whether Ameritech should offer Route Indexing as an interim number portability option?

DECISION:

The Panel finds that Ameritech should not be required to provide Route Indexing as an interim

number portability option. Based on the Panel's decision, the Agreement language proposed by Ameritech on this issue in §§ 13.2, 13.3.2, 13.3.3, 13.3.4, A13.4, 13.5 and 13.9 should be adopted.

REASONS FOR DECISION:

Route Indexing is at best, a medium-term number portability solution for which further development is unwarranted given the industry-wide emphasis on developing long-term solutions in the near future. The focus now should be on developing long-term solutions. Therefore, Ameritech should not be required to divert its resources for another interim solution that will soon be obsolete. Ameritech proposes interim number portability be provided via Remote Call Forwarding (RCF), Direct Inward Dialing (DID) and NXX Migration. Ameritech also states that other methods of providing interim number portability, to the extent technically feasible, may be provided pursuant to the BFR process.

The FCC has stated that the increased cost associated with medium-term number portability solutions are unwarranted given the imminent implementation of a long-term solution (June 27, 1996 Order in CC Docket No. 95-116, ¶ 116). The Panel finds that the outstanding interim number portability issues are rendered irrelevant by AT&T's proposed second quarter, 1998 interconnection with Ameritech. According to the FCC's ordered schedule, long-term number portability will begin to be offered in Michigan no later than the first quarter, 1998. Therefore, the interconnection activation date will not occur until after long-term number portability will be available to AT&T.

The Panel is of the opinion that Ameritech should not have to incur the cost for the short time Route Indexing would be used. The FCC recognized that the capability to provide RCF and DID interim number portability arrangements already exists in most of today's networks and no additional

upgrades are necessary.

ISSUE 22

Whether AT&T Customer Listings should be included in Ameritech's Yellow Pages Directories as well as its White Pages Directories? Whether information regarding the manner in which customers may contact AT&T for telephone service should be included in Ameritech's directories? Whether Ameritech should distribute directories to AT&T customers at no additional charge?

DECISION:

AT&T Customer Listings should be included in Ameritech's Yellow Pages Directories as well as its White Pages Directories. Information regarding the manner in which customers may contact AT&T for telephone service should be included in Ameritech's directories. AT&T's proposed Agreement language at § 15.1.7 should be adopted. AT&T's proposed Agreement language at § 15.2.5 should be adopted for AT&T resale customers only.

REASONS FOR DECISION:

In its August 8, 1996 Second Report and Order in CC Docket No. 96-98 the FCC addressed, among other matters, nondiscriminatory access to directory listings as required in § 251(b)(3) of the Act. The Panel's conclusion that primary yellow pages listings are required by the Act is in complete concurrence with the FCC's Order on this subject. In its Order, the FCC concluded that at a minimum directory listings must include "the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications" (Footnote #315 at ¶ 134).

The necessity for including information in Ameritech directories regarding the manner by which customers may contact AT&T is supported by state law and rules. Sec. 309(1) of the MTA [MCL 484.2309(1)] requires providers of basic local exchange service to provide directories to each of its customers. In addition, Rule 52 of the Commission's billing standards effective July 1996 requires that information be included in directories specifying how a customer may contact its provider about telephone service (R 484.353). The Panel finds that such information must be included in directories in order to comply with these requirements.

Regarding the distribution of directories, the Panel agrees with AT&T with respect to its resale customers. It was on this basis that AT&T's original testimony was presented on this issue (Direct Testimony of Sarah DeYoung, pp. 47-49) and it is on a resale basis with which the Panel agrees that directories must be distributed. Ameritech should not charge AT&T for its provision of directories to AT&T's resale customers just as Ameritech does not separately charge its retail customers for this distribution. No administrative or other charges should be added for the distribution process, extra copies, recycling, or other processes that relate to the distribution of directories. These activities are included in the retail local exchange rate and hence, the rate paid by AT&T will compensate Ameritech appropriately for these activities. However, the Panel finds that AT&T's proposed contract language at §15.2.5 should be amended to specify that this obligation exists in regard to AT&T's resale customers only and not to those customers it will ultimately serve through facilities-based alternatives.

ISSUE 23

Whether Ameritech or Ameritech's publisher should be responsible for direct communications

with AT&T in connection with the provisioning of directory listings and directories for AT&T retail customers?

DECISION:

Ameritech, not its publisher, should directly communicate with AT&T in connection with the provisioning of directory listings and directories for AT&T retail customers. This provisioning shall be as set forth in AT&T's proposed Agreement Article XV.

REASONS FOR DECISION:

Since a subsidiary of Ameritech publishes the directory, AT&T should be entitled to look to Ameritech and not to Ameritech's publisher as the appropriate party for performance. Section 251(b)(3) of the Act requires Ameritech to permit nondiscriminatory access to directory listings. Since the directory is published by an Ameritech subsidiary, this may best be accomplished through AT&T's proposed language for § 15.2.5 of the Agreement.

ISSUE 24

Does Ameritech's duty to permit access to rights-of-way include the duty to permit access to real property owned or leased by Ameritech?

DECISION:

Rights-of-way in this agreement should include property owned, leased, or otherwise controlled by Ameritech. "Right-of-way" should not be interpreted in this Agreement to be limited to real estate owned by third parties.

REASONS FOR DECISION:

Pursuant to § 224(f)(1) of the Act, ILECs, such as Ameritech, must grant AT&T and other

telecommunication carriers nondiscriminatory access to all poles, ducts, conduits and rights-of-way owned or controlled by them. As stated at § 1123 of the FCC Order:

> ". . . This directive seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields. Section 224(f)(1) appears to mandate access every time a telecommunications carrier or cable operator seeks access to the utility facilities or property identified in that section, with a limited exception allowing electric utilities to deny access 'where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.'"

The term "right-of-way" under the Act should not be interpreted to be limited to property owned by a third party as opposed to property owned by a utility itself. In Michigan "right-of-way" has been interpreted to mean more than just property owned by a third party. Thus, in Westman v Kiell, 183 Mich App 484 (1990) the court stated as follows at page 493:

> "A railroad may acquire in a strip of real property for use as a right-of-way, as in any real property, a fee simple absolute, a determinable fee, an easement, a lease, or a license, as may any other corporate entity or individual. The character of the interest acquired is determined by the language of the conveyance."

Thus, the fact that a strip of land used for a conduit run or other distribution facilities is owned by an ILEC in "fee simple absolute" does not mean it is not used as a "right-of-way" under Michigan law and therefore is not available for use by a new entrant under § 224(f) of the Act. Furthermore, the Panel does not believe Congress intended the access to land on which network distribution facilities are located is to be dependent on whether the original right to use the property to construct and maintain facilities was acquired by lease, easement or license, in fee simple or by way of some other legal interest.

If Ameritech's contract proposal were adopted, Ameritech could exclude AT&T from laying

cable in trenches adjacent to Ameritech's own cable due to the fact that Ameritech was the owner in fee of the underlying property. We note in particular that Ameritech's current Michigan tariff on pole attachment and conduit occupancy permits a third party to place cables or wires "in the company's conduit or trench system where reasonably available." Tariff MPSC No. 20, Part 2, Section 6, General Regulations, A.1 (emphasis added). Thus, Ameritech's own tariff does not distinguish between trench systems located in easements and trench systems located on property owned by Ameritech.

Multiple public utilities may share a single corridor or strip of land as a right-of-way for their respective facilities. The specific legal interest any one of them may have in the underlying real estate is irrelevant in addressing access under § 224(f) of the Act. If the real estate is owned or controlled by an ILEC and is used, planned to be used, or suitable for use for the ILEC's distribution facilities, then the property is a "right-of-way" and AT&T must be given access to it under § 224(f). The purpose of § 224(f)(1) is to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently, or otherwise, installation and maintenance of telecommunication and cable equipment by those seeking to compete in these fields.

ISSUE 25

Should Ameritech be entitled to deny access to a pole, duct, conduit or right-of-way (referred to jointly as Structure) on the basis of lack of capacity where Ameritech has not taken all reasonable steps, including modification to its Structure to expand its capacity?

DECISION:

AT&T's Agreement language at § 16.1.2 should be included to indicate that before Ameritech

may deny access due to insufficient capacity, it must first show that it cannot create the necessary space by modifying its Structure or by taking other reasonable steps.

REASONS FOR DECISION:

The FCC Order at ¶ 1161 states as follows:

> "When a utility cannot accommodate a request for access because the facility in question has no available space, it often must modify the facility to increase its capacity."

Similarly, § 1162 of the FCC Order states as follows:

> "A utility is able to take the steps necessary to expand capacity if its own needs require such expansion. The principle of nondiscrimination established by Section 224(f)(1) requires that it do likewise for telecommunication carriers and cable operators. . . . The lack of capacity on a particular facility does not necessarily mean there is no capacity in the underlying right-of-way that the utility controls. For these reasons, we agree with commenters who argue that a lack of capacity on a particular facility does not automatically entitle a utility to deny a request for access. Since the modification costs will be borne only by the parties directly benefitting from the modification, neither the utility nor its ratepayers will be harmed. . . ."

The FCC Order therefore clearly indicates that prior to denying access to Structures reasonable efforts should be taken to modify these Structures. Furthermore, if Congress had intended to not require LECs to modify Structures, it could clearly have so stated. It did not do so.

ISSUE 26

Does Ameritech's duty to permit AT&T access to Structure it owns or controls include the duty to provide access to Structure owned or controlled by Ameritech and located on a public right-of-way?

DECISION:

Ameritech's duty to permit access to Structure it owns or controls includes the duty to

provide such access where the Structure is located on a public right-of-way and where Ameritech has control of the Structure to the extent necessary to permit the requested access without violating the terms of its existing authorization to use the public right-of-way. This duty is set forth at § 16.1.1 of AT&T's proposed Agreement. At § 16.2 of its proposed Agreement, AT&T has agreed to secure any legally required permission and indemnify Ameritech against loss resulting from any actual lack of lawful authority. The Panel, therefore, finds that AT&T's proposed language for § 16.1.1 and § 16.2 should be included in the Interconnection Agreement.

REASONS FOR DECISION:

The FCC Order provides at ¶¶ 1178 and 1179 that an ILEC's access obligations apply where, as a matter of state law, the ILEC controls the right-of-way, private or public, to the extent necessary to permit such access. Section 251 of the MTA (MCL 484.2251) provides that if not contrary to public health, safety and welfare, local units of government shall permit access to public rights-of-way to providers of telecommunication services. Where Ameritech's right to use of a public right-of-way is sufficient to allow it to lawfully provide access to AT&T, it is required to provide such access. Ameritech is not required to provide such access where it has established that it has no authority to do so. AT&T's agreement to indemnify Ameritech against losses resulting from any actual lack of lawful authority provides reasonable protection for Ameritech.

ISSUE 27

What types of equipment may be attached to Ameritech's Structure?

DECISION:

Ameritech should provide to AT&T, to the extent it may lawfully do so, access to its

Structures owned or controlled by it for the placement of AT&T's "telecommunications equipment and related facilities."

REASONS FOR DECISION:

Ameritech's proposed § 16.1.1 of the Agreement states that AT&T's equipment which may be attached to Ameritech's Structures consists of AT&T's "wires, cables and related facilities." On the other hand, AT&T's proposed § 16.1.1 provides for the attachment of AT&T's "telecommunications equipment and related facilities" to Ameritech's Structures.

Paragraph 1186 of the FCC Order states as follows:

> "1186. The statute does not describe the specific type of telecommunications or cable equipment that may be attached when access to utility facilities is mandated. We do not believe that establishing an exhaustive list of such equipment is advisable or even possible. We presume that the size, weight, and other characteristics of attaching equipment have an impact on the utility's assessment of the factors determined by the statute to be pertinent--capacity, safety, reliability and engineering principles. The question of access should be decided based on those factors."

The Panel finds that AT&T's proposed § 16.1.1 of the Agreement is in accord with ¶ 1186 as to what attachments AT&T can make to Ameritech's Structures. The Panel agrees that the equipment that may be attached to Ameritech's Structure does not need to be specifically indicated. Instead, consideration should be given to capacity, safety, reliability and engineering principles in determining what attachments AT&T may make to Ameritech's Structure.

ISSUE 28

If Ameritech denies a request of AT&T for access to Ameritech's Structure must Ameritech provide written reason for such denial not later than 45 days from such request?

DECISION:

Ameritech must provide written reasons for denial for access to its Structure not later than 45 days from such a request. Therefore, the Panel finds that AT&T's proposed § 16.1.2 of the Agreement should be adopted.

REASONS FOR DECISION:

Ameritech's § 16.1.2 of the contract indicates that Ameritech will provide reasons for denial of access to its structure within 45 days if it has actual or constructive knowledge of the reasons for such denial or in the alternative it will promptly provide reasons for its denial if such reasons are not known until after the expiration of the 45-day period.

Ameritech's § 16.1.2 proposed language would let Ameritech delay giving reason for denying access to its Structure until it could come up with a reason for such denial. This clearly would not be in accord with the intent of the Act or the rules issued in the FCC's Order. Specifically, 47 C.F.R. § 1.1403(b) states as follows:

> ". . . If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards."

On the other hand, AT&T's proposed language for the last sentence in § 16.1.2 of the contract is clearly in accord with the Act and is specifically in accord with 47 C.F.R. § 1.1403(b).

ISSUE 29

If Ameritech and AT&T are unable to agree on a reasonable cost or timeframe for completion of access related work, should AT&T or its contractors be permitted to conduct field survey work

and make ready work so as to permit AT&T to establish its own intervals for establishing access?

DECISION:

If Ameritech and AT&T are unable to agree on a reasonable cost or timeframe for completion of access work, AT&T or its contractors should not be permitted to conduct field work and make ready work to establish its own intervals for establishing access.

REASONS FOR DECISION:

AT&T's proposed § 16.3 of the Agreement concerning access and modifications should not be adopted since this would likely only add to, rather than solve disputes. Furthermore, AT&T's proposal is not required by the Act or the FCC Order.

ISSUE 30

What language should be adopted concerning AT&T's installation and maintenance responsibility for work performed on Structures by AT&T's workmen or contractors?

DECISION:

AT&T's proposed language for § 16.4 of the Agreement should be adopted.

REASONS FOR DECISION:

AT&T's proposed § 16.4 calls for the work to be performed by properly trained competent workmen skilled in the trade. Ameritech's proposed § 16.4 requires that the work be performed by workmen with qualification and training at least equivalent to that of the workers and contractors of Ameritech. Ameritech's proposed language leaves the impression that Ameritech's requirements are the only possible proper requirements for workmen performing work on Ameritech's Structures. However, Ameritech's proposed language for § 16.4 is not required by the Act or the FCC Order and

could unnecessarily increase the costs involved in working on Structures.

ISSUE 31

Whether Ameritech should be permitted to limit the number and scope of AT&T's access requests being processed at any time?

DECISION:

Ameritech's proposed § 16.7 of the Agreement to limit the number and scope of access requests from AT&T being processed at any time should not be adopted.

REASONS FOR DECISION:

Ameritech's proposal is not only not required by the Act or the FCC Order, but is contrary to the intent of the Act and the FCC Order since it could result in unnecessary delay in carrying out the interconnection required by the Act.

ISSUE 32

If Ameritech moves, replaces or changes the location, alignment or grade of its conduit or poles to which AT&T has attached equipment and/or facilities will AT&T have to bear the expense of relocating its equipment and/or facilities?

DECISION:

If Ameritech is required by a government entity, court or commission to replace or change the location, alignment or grade of its conduits or poles, both Ameritech and AT&T should bear their own expenses of relocating their own equipment and facilities provided that such alteration is not solely due to Ameritech's negligence in originally installing this Structure. If the alteration is due to Ameritech's negligence, Ameritech should be responsible for AT&T's expenses in relocating its

equipment and facilities. Therefore, the Panel finds that AT&T's proposed § 16.12 of the Agreement should be adopted.

REASONS FOR DECISION:

Ameritech's proposed § 16.12 concerning Cost of Certain Modifications of the Agreement provides that if Ameritech is requested by a government entity, third person, court or commission or property owner to replace or change the location, alignment or grade of its conduits or poles, both Ameritech and AT&T will bear its own expenses of relocating its own equipment and facilities. AT&T, on the other hand, provides in its § 16.12 that if Ameritech is required by a government entity, court or commission, and then moves, replaces or changes the location, alignment or grade of its conduit or poles then each party shall bear its own expenses of relocating its own equipment and facilities provided that such alteration was not due to Ameritech's negligence in originally installing the structure.

The FCC Order provides as follows:

> "1211. With respect to the allocation of modification costs, we conclude that, to the extent the cost of a modification is incurred for the specific benefit of any particular party, the benefiting party will be obligated to assume the cost of the modification, or to bear its proportionate share of cost with all other attaching entities participating in the modification. If a user's modification affects the attachments of others who do not initiate or request the modification, . . . the modification cost will be covered by the initiating or requesting party."
>
> "1212. As a general approach, requiring that modification costs be paid only by entities for whose benefit the modification is made simplifies the modification process. For these purposes, however, if an entity uses a proposed modification as an opportunity to adjust its preexisting attachment, the 'piggybacking' entity should share in the overall cost of the modification to reflect its contribution to the resulting structural change."
>
> "1213. We recognize that limiting cost burdens to entities that initiate a modification,

> or piggyback on another's modification, may confer incidental benefits on other parties with preexisting attachments on the newly modified facility. Nevertheless, if a modification would not have occurred absent the action of the initiating party, the cost should not be borne by those that did not take advantage of the opportunity by modifying their own facilities. Indeed, the Conference Report accompanying the passage of the 1996 Act imposes cost sharing obligations on an entity 'that takes advantage of such opportunity to modify its own attachments.' This suggests that an attaching party, incidentally benefitting from a modification, but not initiating or affirmatively participating in one, should not be responsible for the resulting costs. . ."

AT&T's proposed § 16.12 of the Agreement is thus in accord with the FCC's Order, and the Conference Report accompanying passage of the Act. On the other hand, Ameritech's proposed § 16.12 is not in accord with the Act nor the Conference Report. Therefore, AT&T should not be required to share in the cost of modifying Ameritech's Structures unless AT&T receives a direct benefit from this modification. Furthermore, AT&T should not be obligated to pay for any modifications which were caused by Ameritech's negligence.

ISSUE 33

Whether Ameritech's or AT&T's proposed § 16.16 of the Agreement concerning inspections of AT&T's attachments to Ameritech's Structures should be adopted?

DECISION:

The Panel finds that AT&T's proposed § 16.16 concerning inspections of AT&T's attachments to Ameritech's Structures should be adopted.

REASONS FOR DECISION:

The cost of inspections of AT&T's work by Ameritech should not be done at AT&T's expense since these inspections are for Ameritech's benefit. Also, the costs AT&T would have to pay for Ameritech inspections would be entirely governed by the extent of the inspections that

Ameritech chooses to conduct. In addition, inspections by Ameritech to see if AT&T has performed its work in accordance with valid permits is unnecessary since it is AT&T's responsibility to obtain these permits. Furthermore, AT&T has agreed to indemnify Ameritech against any problem related to these permits.

ISSUE 34

Whether interconnection of AT&T ducts and conduits with Ameritech's manholes can be denied where modification of Ameritech's Structures to accommodate AT&T's request for access is possible?

DECISION:

Ameritech's proposed language for § 16.20.1 concerning interconnection of AT&T's ducts or conduits with Ameritech manholes should be rejected.

REASONS FOR DECISION:

Ameritech's proposal preventing interconnection of Ameritech's Structures to AT&T's manholes where "modification of Ameritech's Structures to accommodate AT&T's request for access is possible" is not in accord with the access obligations of § 224(f)(2) of the Act which allows denial of access only where there is insufficient capacity or for safety, reliability and generally applicable engineering purposes.

ISSUE 35

Whether AT&T's proposed additional language for § 16.24 of the contract concerning abandonments, sales or disposition of Ameritech's Structures is appropriate?

DECISION:

The first sentence of AT&T's proposed addition to Agreement § 16.24 should be adopted and the second sentence of AT&T's proposed addition to Agreement § 16.24 should not be adopted.

REASONS FOR DECISION:

It is reasonable that any disposition of Ameritech's Structures where AT&T has attachments should be subject to AT&T's attachments. However, consideration of AT&T's attachments should not result in granting AT&T a right of first refusal to such Structures since there may be other interests in these Structures beyond those of Ameritech and AT&T.

ISSUE 36

Should AT&T's proposed Supplier Quality Management System be adopted? Whether the contract should include specific timetables for the deployment plan and an enforcement mechanism, including penalty provisions for failure to meet time requirements or other deficiencies in performance?

DECISION:

AT&T's Supplier Quality Management System delineated on Schedule 18.2 and referred to in §§ 18.2 and 18.4 of the Agreement should be rejected. The implementation timetable proposed by AT&T at § 18.2 of the Agreement along with AT&T's proposed penalty provisions delineated at § 18.5.2 should be adopted. The additional penalties proposed by AT&T at § 18.5.3 of the Agreement should be rejected.

REASONS FOR DECISION:

The Panel rejects AT&T's proposed Supplier Quality Management System as unnecessary at

this time. Given the establishment of Standards of Performance in each area of interconnection as discussed above, it is unnecessary and potentially costly to prescribe further requirements in this area. The Panel, however, is in agreement with AT&T that timetables for performance should be specified and non-compliance with these timetables should be addressed in the dispute resolution process adopted by this Panel in Schedule 28.3. As the FCC has recognized at ¶ 55 of its Order, an incumbent LEC is required to make available its facilities and services for the purpose of direct competition for its customers. There is no market incentive to perform as agreed upon because AT&T has no other vendor possibilities. Absent a clear timetable for implementation, it will be difficult for AT&T to serve new markets on a broad basis. Specifying such an implementation deadline is also in compliance with the requirements of § 252(c)(3) of the Act where it is required that such information be delineated. The Panel is also of the belief that the potential for penalties will provide an incentive to Ameritech to abide by the agreed upon timeframes. The dispute resolution process will review specific situations if time deadlines are not met.

The Panel, however, rejects the payment of penalties to AT&T for Ameritech non-compliance with the FCC's rule regarding provisioning of electronic interfaces by January 1, 1997 (47 C.F.R. § 51.319(f)(2)). In the Panel's opinion, occurrences of non-compliance are more appropriately directed to the regulatory commission and/or courts as discussed at §§ 128-129 of the FCC's Order. AT&T's proposed contract language at § 18.5.3 is therefore rejected.

ISSUE 37

Whether AT&T and Ameritech should be required to provide customer payment history information to each other?

DECISION:

AT&T and Ameritech should not be required to provide customer payment information to each other.

REASONS FOR DECISION:

AT&T's proposed § 19.19 would require Ameritech and AT&T to make available through a designated third-party credit bureau, customer payment history for each customer for local service. The Panel finds that AT&T's proposed § 19.19 should not be adopted since the Act does not require Ameritech to provide the credit information AT&T requests. AT&T can clearly obtain this credit information from other sources including established credit bureaus.

ISSUE 38

Whether Ameritech's or AT&T's proposed Agreement § 20.2.4(iv) concerning disclosure and use of Proprietary Information should be adopted?

DECISION:

AT&T's proposed Agreement § 20.2.4(iv) concerning disclosure and usage of proprietary information should be adopted.

REASONS FOR DECISION:

Section 20.2.4(iv) involves protection against application of the proprietary information provisions of the Agreement where Ameritech or AT&T has received information from a third person without knowledge that such third person was obligated to protect the confidentiality of this information. Ameritech's proposed § 20.2.4(iv) provides that if the receiving party has exercised commercially reasonable efforts to determine whether such third person had any obligation to protect